

**SUMMONS  
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:  
(AVISO AL DEMANDADO):**

River Canyon Retreat, Inc., d/b/a Earth Circle Organics

**YOU ARE BEING SUED BY PLAINTIFF:  
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

As You Sow

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)  
**ENDORSED  
FILED  
ALAMEDA COUNTY**  
SEP 12 2017  
CLERK OF THE SUPERIOR COURT  
By: D. OLIVER, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desecher el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Alameda County Superior Court  
1225 Fallon Street, Oakland, CA 94612

CASE NUMBER:  
(Número de Caso) **KG17874953**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Laura D. Beaton, Shute, Mihaly & Weinberger, LLP, 396 Hayes, St., S.F., CA (415) 552-7272

**Chad Finke** Clerk, by **D. OLIVER**, Deputy  
(Fecha) September 12, 2017 (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)  
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



**NOTICE TO THE PERSON SERVED:** You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
 

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
- by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Ellison Folk (SBN 149232) Laura D. Beaton (SBN 294466) SHUTE, MIHALY & WEINBERGER LLP 396 Hayes Street, San Francisco, CA 94102 TELEPHONE NO: 415-552-7272 FAX NO: 415-552-5816 ATTORNEY FOR (Name): Plaintiff: As You Sow	<b>FOR COURT USE ONLY</b>  ENDORSED FILED ALAMEDA COUNTY  SEP 12 2017  CLERK OF THE SUPERIOR COURT By: D. OLIVER, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME:	
CASE NAME: As You Sow v. River Canyon Retreat, Inc., dba Earth Circle Organics	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <b>KL 17874953</b> JUDGE: DEPT:

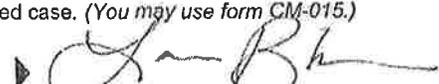
*Items 1-6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |                                                                                                                                |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| a. <input type="checkbox"/> Large number of separately represented parties                                                     | d. <input type="checkbox"/> Large number of witnesses                                                                                                      |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence                                                         | f. <input type="checkbox"/> Substantial postjudgment judicial supervision                                                                                  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): **1 FOR THE VIOLATION OF PROP. 65.**
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 12, 2017  
 Laura D. Beaton

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

<b>NOTICE</b>
<ul style="list-style-type: none"> <li>Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.</li> <li>File this cover sheet in addition to any cover sheet required by local court rule.</li> <li>If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.</li> <li>Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.</li> </ul>

BY FAX

F. ADDENDUM TO CIVIL CASE COVER SHEET

<b>Short Title:</b> As You Sow v. River Canyon Retreat, Inc., dba Earth Circle Organics	<b>Case Number:</b>
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**CIVIL CASE COVER SHEET ADDENDUM**

**THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA**

<input checked="" type="checkbox"/> Oakland, Rene C. Davidson Alameda County Courthouse (446)		<input type="checkbox"/> Hayward Hall of Justice (447)	
		<input type="checkbox"/> Pleasanton, Gale-Schenone Hall of Justice (448)	
Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto tort (22)	<input type="checkbox"/> 34 Auto tort (G)	<b>Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no</b>
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)	
	Product liability (24)	<input type="checkbox"/> 89 Product liability (not asbestos or toxic tort/environmental) (G)	
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)	
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort / unfair bus. practice (G)	
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)	
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)	
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)	
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)	
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)	
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)	
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)	
		<input type="checkbox"/> 53 Labor comm award confirmation	
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)	
	Collections (09)	<input type="checkbox"/> 81 Collections (G)	
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)	
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)	
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial	<b>Is the deft. in possession of the property?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential	
	Drugs (38)	<input type="checkbox"/> 21 Unlawful detainer - drugs	
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture	
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award	
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate	
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review	<b>Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No</b>
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation	
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect	
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort	
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation	
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental	
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment	
		<input type="checkbox"/> 08 Confession of judgment	
Misc Complaint	RICO (27)	<input type="checkbox"/> 90 RICO (G)	
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)	
	Other complaint (42)	<input checked="" type="checkbox"/> 68 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name	
		<input type="checkbox"/> 69 Other petition	

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10 tlopresti@altshulerberzon.com

11 Attorneys for Plaintiff  
AS YOU SOW

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 COUNTY OF ALAMEDA  
14

15 AS YOU SOW,  
16 Plaintiff,  
17  
18 v.  
19 RIVER CANYON RETREAT, INC., d/b/a  
EARTH CIRCLE ORGANICS, and DOES  
20 1 through 10, inclusive,  
21 Defendants.

Case No. *17874953*  
COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES  
California Health & Safety  
Code §§ 25249.5, et seq.

UNRECORDED  
FILED  
ALAMEDA COUNTY

SEP 12 2017

CLERK OF THE SUPERIOR COURT  
By: D. OLIVER, Deputy

BY FAX

1 Plaintiff AS YOU SOW alleges as follows:

2 **I. INTRODUCTION**

3 1. This complaint seeks an injunction and civil penalties to remedy the continuing  
4 failure of River Canyon Retreat, Inc., d/b/a Earth Circle Organics (“Defendant”) to give clear  
5 and reasonable warnings to residents of California prior to exposing those residents to products  
6 containing lead and cadmium. The State of California has listed lead as a chemical known to  
7 cause cancer and reproductive harm and has listed cadmium as a chemical known to cause  
8 reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986 – also  
9 known as “Proposition 65” – businesses must provide persons with a “clear and reasonable  
10 warning” before exposing them to potentially harmful chemicals like lead or cadmium. Health  
11 & Saf. Code § 25249.6.

12 **II. PARTIES**

13 2. Plaintiff As You Sow is a 501(c)(3) nonprofit organization based in Oakland,  
14 California, and incorporated under the laws of the State of California. As You Sow is dedicated  
15 to, among other causes, the protection of the environment, the promotion of human health, the  
16 improvement of worker and consumer safety, and environmental education. As You Sow is a  
17 “person” pursuant to Health and Safety Code section 25249.11(a). As You Sow brings this  
18 action in the interest of the general public pursuant to Health and Safety Code section 25249.7.

19 3. Defendant River Canyon Retreat, Inc., d/b/a Earth Circle Organics is a business  
20 entity that manufactures, distributes, markets, and/or sells products that contain lead and  
21 cadmium to consumers within the State of California.

22 4. The true names and capacities of Defendants sued herein as Does 1 through 10 are  
23 unknown to Plaintiff, who therefore sues them by fictitious names. Plaintiff will amend this  
24 Complaint to allege the true names and capacities of these Defendants when they have been  
25 determined. Each of the fictitiously named Defendants is responsible for the manufacture,  
26 distribution, marketing, and/or sale of products containing lead and cadmium to consumers in  
27 California.



- Earth Circle Foods Raw & Wildcrafted Dulse [cadmium]

11. On April 12, 2017, Plaintiff provided a third Notice of Violation of Proposition 65 to the California Attorney General, the District Attorney of each county in California, the City Attorney of each California city with a population over 750,000 persons, and Defendant, pursuant to Health and Safety Code section 25249.7(d). This Notice of Violation involved the following products manufactured, distributed, marketed, and/or sold by Defendant:

- Earth Circle Organics Organic Raw 70% Dark Chocolate Raw Cacao Dehydrated Palm Nectar [cadmium]
- Earth Circle Organics Organic Balinese Cacao Cashew Clusters [cadmium]
- Earth Circle Organics Organic Raw White Mulberries [lead]
- Earth Circle Organics Organic Ecuador Cacao Powder [cadmium]
- Earth Circle Organics Raw & Organic Goji Berries [lead]
- Earth Circle Organics Organic Black Maca Powder [lead]
- Earth Circle Organics Organic Red Maca Powder [lead]
- Earth Circle Organics Raw Organic Yellow Maca Powder [lead]
- Earth Circle Organics Organic Nori Sheets Raw Vegan [cadmium]

12. The Notices of Violation included Certificates of Merit that Plaintiff's attorneys had consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to lead and cadmium from the products manufactured, distributed, marketed, and/or sold by Defendant. The Certificates of Merit confirm that, based on that information, Plaintiff's attorneys believe that there is a reasonable and meritorious case for this private action. The Notices of Violation also included Certificates of Service. The Notices of Violation mailed to Defendant included a document entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986: A Summary." In compliance with Health and Safety Code section 25249.7(d) and title 11, section 3102 of the California Code of Regulations, Plaintiff served the Attorney General with Notices of Violation and Certificates of Merit that included confidential factual information sufficient to establish the

1 basis of the Certificates of Merit, including the identity of individual(s) with whom Plaintiff  
2 consulted and the facts, studies, or other data that was reviewed by such person(s).

3 13. None of the public prosecutors that received the Notices of Violation has  
4 commenced and is diligently prosecuting an action against the named Defendant for the  
5 violations alleged in this Complaint, although the notice period established in Health and Safety  
6 Code section 25249.7(d) has elapsed since the Notices of Violation were served by mail.

7 14. Because Plaintiff has fully complied with the requirements of Health and Safety  
8 Code section 25249.7(d), and neither the Attorney General nor any District Attorney, City  
9 Attorney, or prosecutor has commenced and is diligently pursuing an action against the  
10 violations alleged herein, Plaintiff has standing to bring this Complaint.

#### 11 IV. STATUTORY BACKGROUND

12 15. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative  
13 statute passed as "Proposition 65" by a vote of the people in November of 1986.

14 16. The warning requirement of Proposition 65 is contained in Health and Safety Code  
15 section 25249.6, which provides:

16 No person in the course of doing business shall knowingly and intentionally  
17 expose any individual to a chemical known to the state to cause cancer or  
18 reproductive toxicity without first giving clear and reasonable warning to such  
individual, except as provided in Health and Safety Code section 25249.10.

19 17. Regulations promulgated to implement Proposition 65 provide that the warning  
20 method "must be reasonably calculated, considering the alternative methods available under the  
21 circumstances, to make the warning message available to the individual prior to exposure." Cal.  
22 Code Regs., tit. 27, § 25601.

23 18. Proposition 65 also establishes a procedure by which the state is to develop a list  
24 of chemicals "known to the State to cause cancer or reproductive toxicity." Health & Saf. Code  
25 § 25249.8. No warning need be given concerning a listed chemical until one year after the  
26 chemical first appears on the list.

27 19. Proposition 65 provides that any person "violat[ing] or threaten[ing] to violate"  
28 the statute may be enjoined in any court of competent jurisdiction. Health & Saf. Code

1 § 25249.7(a). The statute defines “threaten to violate” as “creat[ing] a condition in which there  
2 is a substantial probability that a violation will occur.” Health & Saf. Code § 25249.11(e). In  
3 addition, violators are liable for civil penalties of up to \$2,500 per day for each violation,  
4 recoverable in a civil action. Health & Saf. Code § 25249.7(b).

5 20. Private actions to enforce Proposition 65 “may be brought by a person in the  
6 public interest” if the action is commenced more than sixty days from the date that the person  
7 has given notice of an alleged violation of Health and Safety Code section 25249.5 or 25249.6 to  
8 the Attorney General; to the District Attorney, City Attorney, or prosecutor in whose jurisdiction  
9 the violation occurred; and to the alleged violator. Health & Saf. Code § 25249.7(d). A  
10 certificate of merit shall be included with the notification to the Attorney General, District  
11 Attorney, City Attorney, or prosecutor in each jurisdiction where the violation occurred. *Id.* If  
12 no public prosecutors commence enforcement within sixty days, then the person giving notice  
13 may sue. *Id.*

## 14 V. FACTS

15 21. Lead is listed under Proposition 65 as a chemical known to the State of California  
16 to cause cancer and reproductive harm. Cadmium is listed under Proposition 65 as a chemical  
17 known to the State of California to cause reproductive harm.

18 22. Defendant manufactures, distributes, markets, and/or sells products for sale or use  
19 in the State of California that contain lead and cadmium. Specifically, Defendant sold to  
20 consumers in the State of California the following products containing lead and cadmium:

- 21 • Earth Circle Organics Organic Balinese Cacao Nibs [cadmium]
- 22 • Earth Circle Foods Raw & Wildcrafted Dulse [cadmium]
- 23 • Earth Circle Organics Organic Raw 70% Dark Chocolate Raw Cacao Dehydrated Palm  
24 Nectar [cadmium]
- 25 • Earth Circle Organics Organic Balinese Cacao Cashew Clusters [cadmium]
- 26 • Earth Circle Organics Organic Raw White Mulberries [lead]
- 27 • Earth Circle Organics Organic Ecuador Cacao Powder [cadmium]
- 28 • Earth Circle Organics Raw & Organic Goji Berries [lead]

- 1 • Earth Circle Organics Organic Black Maca Powder [lead]
- 2 • Earth Circle Organics Organic Red Maca Powder [lead]
- 3 • Earth Circle Organics Raw Organic Yellow Maca Powder [lead]
- 4 • Earth Circle Organics Organic Nori Sheets Raw Vegan [cadmium]

5 23. Use of the products identified in Paragraph 22 results in human exposure to lead  
6 and cadmium when consumers use the products as directed on the labels.

7 24. Defendant knew or reasonably should have known that the products that it  
8 manufactured, distributed, marketed, and/or sold contained lead and cadmium. Defendant has  
9 intended and knows that individuals use the products that Defendant has manufactured,  
10 distributed, marketed, and/or sold. Defendant has therefore knowingly and intentionally  
11 exposed individuals to lead and cadmium through its deliberate acts of manufacturing,  
12 distributing, marketing, and/or selling these products.

13 25. The products described in this Complaint were tested in a certified laboratory and  
14 were found to contain sufficiently high levels of lead or cadmium to necessitate clear and  
15 reasonable warnings under Proposition 65 that use of the products results in exposure to  
16 chemicals known to the State of California to cause cancer and reproductive harm.

17 26. Defendant has failed to provide clear and reasonable warnings that the use of the  
18 products described above results in exposure to chemicals known to the State of California to  
19 cause cancer and reproductive harm, and no such warning was provided to consumers using  
20 those products.

## 21 VI. FIRST CAUSE OF ACTION

22 27. Paragraphs 1 through 26 are realleged as if fully set forth herein.

23 28. Plaintiff is informed and believes, and based on such information and belief,  
24 alleges that Defendant employs ten or more persons.

25 29. By committing the acts alleged above, Defendant has, within the previous twelve  
26 months and in the course of doing business, knowingly and intentionally exposed individuals in  
27 the State of California to lead, a chemical known to the State of California to cause cancer and  
28 reproductive harm, and to cadmium, a chemical known to the State of California to cause

1 reproductive harm, without first giving clear and reasonable warning to such individuals within  
2 the meaning of Health and Safety Code section 25249.6.

3 30. Said violations render Defendant liable for civil penalties of up to \$2,500 per day  
4 for each violation, as well as other remedies.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays that the Court:

7 1. Pursuant to the First Cause of Action, assess civil penalties against Defendant in  
8 the amount of up to \$2,500 per day for each violation of Proposition 65;

9 2. Pursuant to Health and Safety Code section 25249.7, enter such temporary  
10 restraining orders, preliminary injunctions, permanent injunctions, or other orders prohibiting  
11 Defendant from exposing persons within the State of California to lead and cadmium by use of  
12 its products without providing clear and reasonable warnings, as Plaintiff shall specify in further  
13 application to the Court;

14 3. Award Plaintiff its costs of suit;

15 4. Pursuant to Code of Civil Procedure section 1021.5 and any other applicable  
16 provision of law, order Defendant to pay Plaintiff such attorneys' fees and costs as Plaintiff  
17 incurs in bringing this enforcement action; and

18 5. Grant such other and further relief as the court deems just and proper.

19 DATED: September 12, 2017

SHUTE, MIHALY & WEINBERGER LLP

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22 By:



ELLISON FOLK  
LAURA D. BEATON

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24 Attorneys for Plaintiff  
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